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Supreme Court, U.S.
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No. 01-214

In The

Supreme Court of the United States

CENTRAL TEXAS NUDISTS, ROBERT A. MORTON, JR.; and CHRISTINE A. MORTON, Individually and as next friend of ROBERT A. MORTON, III, REBECCA E. MORTON and CHARLES G. MORTON, Minor Children,

Petitioners,

vs.

COUNTY OF TRAVIS AND LOWER COLORADO RIVER AUTHORITY,

Respondents.

On Petition For A Writ Of Certiorari To The Third Court Of Appeals Of Texas

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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31pp

QUESTIONS PRESENTED FOR REVIEW

RESTATEMENT OF PETITIONERS' QUESTIONS 1&2:

> Were Petitioners improperly denied a constitutionally protected right to be nude in public with their children at a clothing optional park where evidence establishes that there exists a governmental interest limiting children's exposure to sexual offenses and possible victimization?

QUESTIONS PRESENTED BY PETITIONERS:

I. The practice of social familial nudism-parents engaging in public recreational activities with their children and other like-minded individuals while nude – is the means by which naturist parents instill important values in their children. Is this expressive activity protected by the First Amendment?

II. Does the United States Constitution limit the ability of a state to interfere with and unduly impede the right of fit parents to direct the moral and social upbringing of their own children through the practice of social familial nudism?

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SUMMARY OF ARGUMENT

The core issue before this court is whether parents have a constitutionally protected right to be nude with their children in a public park. Essentially the Petitioners ask this court to provide them an unprecedented protection that is not supported by any constitutional authority. The park rules at issue merely regulate one location where children under the age of eighteen may not appear nude or be present. These rules do not prevent families from engaging in the naturist philosophy nor does it prevent parents from teaching their children about the naturist lifestyle.

The park rules are presumptively valid and it is the Petitioners' burden to establish that the park rules are wholly arbitrary. *Kite v. Marshall,* 661 F.2d 1027 (5th Cir. 1981). The Petitioners failed to meet this burden at the trial court. The park rules do not address a fundamental right and therefore should be analyzed under the rationally related test as applied by the Supreme Court in *Zablocki v. Redhail,* 434 U.S. 374, 98 S.Ct. 673 (1978).

However, even if the court were to apply the strict scrutiny test, the park rules would be upheld. The Travis County Commissioner's Court had a compelling interest in ensuring the safety and welfare of minors, especially where specific dangers and substantial risks of violations of criminal statutes were established. The park rules are narrowly tailored to achieve the goal of protecting minors. In 1995, Liberty Action International (a nudist/naturalist organization) sponsored an event which proposed the involvement of nude children in a "poster

contest" at Hippie Hollow. As such, Travis County narrowly tailored the park rules to prohibit the admission of minors into the park so as to ensure that photographs were not taken of nude minors, to ensure that exposure to sexual offenses and possible victimization were limited, and to ensure consistency with state law. In addition, the provision prevents a claim that Travis County has acquiesced to an increased risk of criminal activity, particularly involving children at Hippie Hollow. The compelling interest of the state in protecting children would outweigh any incidental infringement of a fundamental right. *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673 (1978).

The evidence is clear and uncontroverted that Hippie Hollow consistently had the highest rate of sexual offenses of any other county park. It is also undisputed that the terrain and the nature of the offenses at the park are obstacles to adequate policing for the safety and well being of children. (Appendix I: Affidavit of Charles Bergh; Appendix II: Affidavit of Roger Dean). It is important to note that no controverting evidence was provided regarding the safety of children at McGregor/Hippie Hollow Park or regarding the ability to police the area.

Petitioners argue that the Third Court of Appeals improperly found that the Travis County park rules are constitutional. Petitioners also assert that this case essentially determines the "viability of the naturist movement in the country." However, Petitioners lobby this proposition without evidentiary support. No logical connection has been articulated to support the conclusion that park rules prohibiting minors in a single location would define the destiny of the entire naturist movement in the United States. Obviously, this dramatic interpretation is a blatant

attempt to create a reason for judicial review so that Petitioners can find validation of their lifestyle choices. However, Petitioners cannot escape the fact that the implications of this case will be limited to the park rules in question and Petitioners cannot disguise the overwhelming evidence in support of the park rules by merely using conjecture, supposition, and argument to advance their philosophical beliefs.

Neither the ruling by the Third Court of Appeals of Texas, nor the record below, raise the questions presented by the Petition. The case does not address whether the United States Constitution "prohibit[s] a local government from impeding the right of fit parents to direct the moral and social upbringing of their own children through the practice of social familial nudism." *See*, Petition for Writ of Certiorari page 2. This case would do nothing more than afford this Court the chance to determine whether content-neutral park rules that prohibit minors from entering a clothing-optional park is reasonably related to the government interest of protecting the welfare and safety of minors when uncontroverted evidence of the possible dangers to children exists. Conveniently, Petitioners once again wholly fail to address the risks that are posed to children at McGregor/Hippie Hollow Park. In this instance, Petitioners not only avoid discussion of these risks in the petition, but also neglect to present any of the relevant evidence to this Court.

Furthermore, this ruling is not in conflict with the United States Constitution, or the recent Supreme Court cases, *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446 (2000), or *City of Erie v. Pap's A.M.*, 539 U.S. 277, 120 S.Ct. 1382 (2001).

The ruling by the Third Court of Appeals was proper and Respondents respectfully request this Honorable Court to deny the Petition for Writ of Certiorari.

STATEMENT OF FACTS

The instant lawsuit was filed after the Travis County Commissioner's Court amended the Travis County Parks' Rules to include rules setting the park policy for Hippie Hollow, a County maintained park. The rules state: 1) "No person under the age of 18 shall be admitted into McGregor/Hippie Hollow" and 2) "Any authorization or consent to the nude display of children and the nude display of adults with children present under the age of eighteen in this park will be treated as a violation of the law and park rules. Violators and parties to such violations will be investigated and prosecuted if possible." (Appendix D, E, F, & G of Petition for Writ: Transcripts of Commissioner's Court Minutes). These rules were adopted July 11, 1995, after the County received notice through publicity by Liberty Action International, a nudist/naturalist organization, that the group intended to sponsor a "poster contest" for children at Hippie Hollow. (Appendix F & G of Petition for Writ: Transcripts of Commissioner's Court Minutes). By adopting the provision, the Travis County Commissioner's Court responded to concerns that the presence of nude children with nude adults, or nude adults with children, clothed or nude, would possibly violate Texas law. Contrary to Petitioners' unsupported assertions, the evidence shows that the Travis County Commissioner's Court was also responding to concerns that the presence of children under the

age of eighteen years at the McGregor/Hippie Hollow park could place the children in danger of being exploited and that the presence of children at the park might increase the possibility of violations of Texas law. (Appendix F & G of Petition for Writ: Transcripts of Commissioner's Court Minutes and Appendix I: Affidavit of Bergh & Appendix II: Affidavit of Dean). Prior to adopting the park rules, the Travis County Commissioner's Court held public sessions regarding the proposed rules. The rules were adopted in order to protect the safety and welfare of minors in addition to making the park rules consistent with state law. (Appendix G of Petition for Writ: Transcripts of Commissioner's Court Minutes).

The park is a clothing optional facility, so that park patrons may choose whether or not to be clothed, as long as their presence or conduct did not violate state law or park rules. The park area is bordered by other publicly accessible areas making it open to public view from the land and the waterfront, which borders Lake Travis. Other public places, such as a restaurant, also border Lake Travis across from the Hippie Hollow beach. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean).

Central Texas Nudists and Robert and Christine Morton, individually and on behalf of their three children, sued Travis County alleging that the park rules were unconstitutional and violated their familial right to privacy, equal protection, substantive due process, freedom of expression, and rights of association under the United States and Texas Constitutions.

ARGUMENT

I.

REASON FOR DENYING WRIT OF CERTIORARI

Contrary to Petitioners' assertions, this case neither implicates the first or the fourteenth amendments of the Constitution nor does this case hold the key to "the continued viability of the naturist movement in the country." *See*, Petition for Writ of Certiorari, page 7. The core issue is whether parents have a constitutionally protected right to be nude with their children in a public park where there is evidence that the children would be exposed to a high number of sexual offenses. This case solely addresses whether content-neutral park regulations can prohibit children at a public clothing-optional park with a high number of sexual offenses is rationally related to the governmental interest of ensuring the welfare and safety of children by preventing exposure to sexual offenses and possible victimization.

A. Neither the record nor the ruling below raises the questions presented by the petition.

The case below, as it relates to Petitioners' claim, merely would afford this court the opportunity to determine whether content-neutral park rules which prohibit minors into a single clothing-optional park is reasonably related to the governmental interest of protecting the welfare and safety of minors, where statistical evidence of possible dangers exist.

The Third Court of Appeals, Texas answered this question in the affirmative and found that the park rules prohibiting minors into a clothing-optional park are constitutional. The Third Court of Appeals found that based

on the evidence presented at summary judgment, "[n]either rule prohibits appellants from raising children according to the naturist philosophy." (Appendix A of Petition for Writ: *CTN, et al. v. Travis County, et al.*, No. 03-00-00024-CV, 2000 Tex. App. LEXIS 8136 (Austin – Dec. 7, 2000, pet. denied).

The record below and the ruling of the Third Court of Appeals show that the park rules are content-neutral provisions that further the interest of protecting minors from exposure to sexual offenses and possible victimization. Yet, the questions presented by Petitioners completely ignore the governmental interest in ensuring the welfare and safety of children at McGregor/Hippie Hollow Park. Instead, Petitioners attempt to misdirect attention to an irrelevant discussion about "social familial nudism" and the expressive activity, which may be associated with that activity. Although Petitioners continually espouse the mantra that this case will determine the "continued viability of the nudist movement in the country," the record, the underlying ruling, nor the questions presented address this issue.

The record below clearly establishes with uncontroverted evidence that the danger exists that children might be exposed to criminal activity or might be victimized at Hippie Hollow. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). The number of sexual offenses are higher in McGregor/Hippie Hollow Park than in any other County park. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). The uncontroverted evidence also shows that the terrain and the nature of the offenses at the park are obstacles to adequate policing so as to ensure the safety and well

being of the children. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). Specifically, the police will be unable to prevent photographs of naked children being taken in the park, from passing boats or from the opposite shoreline. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). Once taken, such photographs could be used to the long term detriment of children.

The main purposes of the Travis County rules prohibiting minors at Hippie Hollow are to protect the safety and welfare of children and to safeguard them from possible exploitation. Promulgation of regulations intended to protect the safety and welfare of children, such as the Commissioner's Court rules prohibiting minors at Hippie Hollow, are, therefore, constitutionally permissible. It is also imperative for the Commissioner's Court to adopt provisions consistent with state laws, particularly criminal statutes, so as to prevent defensive claims that violations are allowed by Travis County. The park rules are narrowly tailored in that they do not prevent or disturb the ability of parents to raise their children in accordance with their philosophies, and the provisions do not prevent the Petitioners from practicing their naturist beliefs. The park rules merely do not allow minors, clothed or unclothed, in a clothing-optional park where children may be exposed to various dangers.

The harms that the park rules are designed to prevent are beyond the control of the parents. For example, Hippie Hollow is located on Lake Travis, a large, public lake bordered by other park areas and public facilities such as restaurants. It would be entirely possible, indeed

probable, that photographs could be taken of nude children by another park visitor or boater on Lake Travis, and these photographs could later be published or sold. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). Banning photography at the park, at other surrounding parks, at area restaurants bordering the lake and within view of the main beach at Hippie Hollow, and on all of Lake Travis would be impracticable, unreasonable, if not impossible to enforce.

There are statistically more instances of illegal, sexual conduct at Hippie Hollow than at any other Travis County park facility.[1] (Appendix II: Affidavit of Dean). Individuals have been reported, cited, or arrested for group masturbation, sexual intercourse, and other acts which are illegal under the Texas Penal Code, Section 21, "Sexual Offenses." (Appendix I: Affidavit of Bergh). Clearly, it is not possible for the government to completely prevent all such conduct; however, the exposure

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[1] The evidence is that in the fiscal year 1994 of the 74 sexual offenses that were reported in the 30-park Travis County park system, 64 incidents were reported at Hippie Hollow. In the 1995 fiscal year through September 1st, of 49 sexual offenses in the park system, 43 were reported at Hippie Hollow. In fiscal year 1996, thirty-three (33) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-eight (28) incidents of sexual offenses were reported at Hippie Hollow. In fiscal year 1997, twenty (20) incidents of sexual offenses have been reported in the Travis County park system. Of those, seventeen (17) incidents of sexual offenses were reported at Hippie Hollow. In 1998, twenty-eight (28) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-seven (27) incidents of sexual offenses were reported at Hippie Hollow. (Appendix I: Affidavit of Bergh & Appendix II: Affidavit of Dean).

of children to these acts is an unacceptable risk to the Commissioners of Travis County. Accordingly, the park rules are narrowly tailored to meet the compelling interest discussed previously and no less intrusive measure exists to accomplish this goal. (Appendix B: Affidavit of Dean).

Even Petitioners concede that certain behavior at Hippie Hollow is inappropriate for children[2] and present no evidence to refute the potential danger to children. Petitioners only concentrate on their belief structure. In doing so, Petitioners turn a blind eye to the behavior at Hippie Hollow, which is, by their own testimony, inconsistent with the naturist philosophy and poses a threat to children.

Furthermore, neither the record nor the ruling implicates the viability of the naturist movement. The assertion that the naturist movement is in any way impacted by the park rules is disingenuous. The viability of this movement which, according to the Petitioners, has been around for sixty years, is not threatened by the park rules. *See*, Petition for Writ of Certiorari, page 8. In fact, the websites[3] referenced by Petitioners establish the growing viability of this movement well beyond the boundaries of Hippie Hollow Park. *See*, Petition for Writ

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[2] Petitioner testifies that he experienced a situation at Hippie Hollow that potentially exposed his children to "inappropriate behavior." *See*, Appendix H of the Petition for Writ of Certiorari, Affidavit of Robert Morton, Jr., page 137a, paragraph 11.

[3] These websites are improperly before the court because they were not summary judgment evidence.

of Certiorari, page 8. In addition, Petitioners testify that their children, who were ages 12 and 16 in 1999, were well-rounded productive members of society who embrace the naturist philosophy. The reality is that the Petitioners clearly were able to imbue their children with their belief structure without the use of Hippie Hollow Park. As such, the park rules do not silence the naturist movement nor do the rules infringe on Petitioners' ability to inculcate their children with a particular belief structure.

B. Recent Supreme Court decisions do not need to be clarified in relation to this case.

The Trial Court did not err in granting Travis County's Summary Judgment because Petitioners were not improperly denied a constitutionally protected right to be nude in public with their children. No conflicts exist among the courts. In addition, the ruling by the Third Court of Appeals does not require clarification.

1. *City of Erie v. Pap's A.M.'s* impact on this case.

This Court's recent decision in *City of Erie v. Pap's A.M.*, 539 U.S. 277, 120 S.Ct. 1382 (2001) reaffirms that "[b]eing 'in a state of nudity' is not an inherently expressive condition." *City of Erie v. Pap's A.M.*, 539 U.S. 277 at 289. As in *Erie*, this park rule, "[b]y its terms, . . . regulates conduct alone." *City of Erie v. Pap's A.M.*, 539 U.S. 277 at 290. As such, the first amendment is not implicated.

However, even if the Court were to determine that the first amendment was implicated, the Court still would apply the *O'Brien* factors as relied upon in *City of Erie v. Pap's A.M.* *See, United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673 (1968). Application of the *O'Brien* factors results in a finding that the park rules are constitutional because they are content-neutral rules that address the governmental interest of protecting children from exposure to sexual crimes and possible victimization. Evidence of the types of potential dangers supports the link between the park rules and achieving the governmental interest of protecting the welfare and safety of minors.

In fact, the park rules mirror the park rule upheld in *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 104 S.Ct. 3065 (1984). In *Clark,* the court held that a National Park Service regulation prohibiting camping in certain parks did not violate the First Amendment when it was applied to prohibit demonstrators from camping overnight. The Court, even when assuming that the sleeping was expressive conduct, found that because the government's interest in protecting the park was unrelated to the message, the park rule was constitutional. Similarly, in this situation, the government's interest in protecting minors is unrelated to the message of "social familial nudity." Thus, the park rules are constitutional.

In *City of Erie,* this Court also found that banning a means of expression through a regulation that may have an incidental effect on the expressive element of the conduct does not make the provision unconstitutional. *City of Erie v. Pap's A.M.,* 539 U.S. 277 at 293. Even if nudity in public can be said to contain an expressive element, the park rules in this case have only the effect of

limiting one particular location for parents to convey their naturist message. As such, in light of the governmental interest in protecting minors, the park rules are constitutional.

2. *Boy Scouts of America v. Dale* is not implicated in this case.

Contrary to Petitioners' assertions, *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446 (2000) is distinguishable from the case at bar. In *Boy Scouts*, the issue was the forced inclusion of an unwanted person into a group when the inclusion of that person's presence affects in a significant way the group's ability to advocate a viewpoint. In this instance, no forced inclusion exists. In fact, Petitioners admit they have successfully inculcated their children with their belief structure without the use of Hippie Hollow Park.

The freedom to expressive association has never been absolute, as recognized in *Boy Scouts of America v. Dale*, 530 U.S. 640 at 641, and expressive association can be limited if the inclusion does not affect in a significant way the group's ability to advocate a viewpoint. *Id.* In this instance, the evidence establishes that the ability to advocate a viewpoint was undeterred.

As discussed *supra*, Travis County has an interest in ensuring the welfare and safety of children at its parks. Enacting a content-neutral regulation that did not ban nudity altogether, but merely limited access to minors furthered this interest. Although *Boy Scouts of America* recognizes various forms of expressive conduct, it does not in any way alter the constitutionality of the park

rules, because, according to Petitioners' evidence, the park rules do not affect in a significant way the group's ability to advocate a viewpoint. Furthermore, the Petition for Writ also demonstrates the growing number of naturists in the United States; thus, Petitioners negate the proposition that the park rules have impacted in a significant way the group's ability to advocate a viewpoint.

Petitioners also assert that the park rules somehow infringe on the fundamental right to raise their children. However, the rules do not infringe on the right to raise children according to the naturist lifestyle, but rather "the rules impose a restriction on where the practice of that philosophy may occur by establishing an age restriction for admittance to McGregor/Hippie Hollow Park that applies to all families." (Appendix A of Petition for Writ of Certiorari; *CTN v. Travis County*). The park rules do not infringe on a fundamental right. Additionally, an incidental interference with a fundamental right is permissible under a mere rationality test, which is easily met in this matter. *Kite v. Marshall*, 661 F.2d 1027 (5th Cir. 1981).

C. This case does not have far reaching implications.

Petitioners improperly attempt to present this case as a seminal case on whether familial nudity is socially acceptable; however, this representation is unwarranted. Petitioners focus on the recent Supreme Court cases to argue that the Third Court of Appeals, Texas has stifled the ability of naturist parents to imbue their children with their belief structure. The connection between the instant

case and the recent Supreme Court cases for the proposition of "silencing" expressive association are, at best, tenuous.

The park rules do not infringe on the right of parents to raise children. The rules impose an age restriction for admittance to McGregor Park that applies to all families As is consistently recognized, parental rights are not absolute. *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673 (1978), *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526 (1972). An incidental effect upon a fundamental right is constitutional if there is a governmental interest in protecting the welfare of children, as has been established by the evidence in this case. *Id.*

The park rules do not infringe on expressive association and are not a mechanism to stifle Petitioners' speech. Even according to Petitioners, Travis County has been a hospitable place for the naturist movement. The rules do not hinder that movement. A ruling by this court would serve no purpose but to uphold or nullify park rules limiting minors at a clothing-optional park in central Texas. Therefore, the park rules do not require this Court's review.

II.

PETITIONERS MISCHARACTERIZE THE EVIDENCE PROVIDED AS SUMMARY JUDGMENT EVIDENCE.

It is imperative to identify for the Court portions of the Petitioners' facts that are inconsistent and unsupported by the summary judgment evidence. Petitioners compensate for the lack of evidence by making conclusory assertions, in hopes that the argument provided

by counsel will be sufficient to support these conclusory allegations. Although it is appropriate to advocate a position, the Petitioners may not substitute argument, presumption and supposition as evidence to defeat Travis County's Motion for Summary Judgment.

A. Affidavit of Paul Abramson is irrelevant.

Dr. Paul Abramson's affidavit is irrelevant[4] to any issue addressed by this Court. Petitioners seem to search for validation of their lifestyle choice and therefore fail to recognize that the merits of the naturist lifestyle are not at issue. The issue for the Court is the safety and welfare of the children at Hippie Hollow. In his affidavit (page 2), he states "there are No adverse effects on any of our outcome measures as a consequence of *parental nudity.*" In this statement, he limits his finding to parental nudity within the home. This assertion is completely irrelevant to whether Hippie Hollow is a safe environment for children, where the children may be exposed to a myriad of sexual offenses, and which may expose the children to victimization. Contrary to Petitioners' assertions, his affidavit does NOT state that exposure to social familial nudity is likely to assist parents in their effort to teach children.[5]

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[4] Travis County's objections to Dr. Abramson's Affidavit were sustained.

[5] It is important to note that Dr. Abramson did not provide any evidence to support any finding that "exposure to familial nudity" assists in teaching children.

B. Petitioners have no evidence concerning safety at Hippie Hollow Park.

Petitioners wholly fail to provide any evidence to controvert the existence of safety issues regarding children at Hippie Hollow, i.e., the ability to photograph nude children from the lakeshore on passing boats. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). The Petitioners' response to the evidence of the risk of exposing minors to a high number of sexual offenses at Hippie Hollow is merely to present an anecdotal account of the Mortons' experiences at Hippie Hollow. Once again, Petitioners incorporate facts that are wholly absent from the summary judgment evidence. In fact, the evidence is to the contrary. The uncontroverted evidence, which was unobjected to by Petitioners and which can be accepted as an accurate method of statistical analysis, is that within the county parks system Hippie Hollow has a higher number of sexual offenses than any other Travis County park.

CONCLUSION AND PRAYER

After considering the relevant facts and applicable law, the Third Court of Appeals, Texas properly found that the park rules were constitutional. Contrary to Petitioners' assertions, these park rules do not improperly infringe on the expressive association and do not impede the ability of a parent to imbue their children with a particular belief structure. This case raises no significant issue of constitutional law that warrants review by this Court.

For all of the foregoing reasons the Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX I

CAUSE NO. 95-11383

CENTRAL TEXAS NUDISTS, AND ROBERT A. MORTON, JR. AND CHRISTINE A. MORTON, INDIVIDUALLY AND AS NEXT FRIEND OF ROBERT A. MORTON, III, REBECCA E. MORTON, and CHARLES G. MORTON, Plaintiffs V. COUNTY OF TRAVIS, Defendant.	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 201st JUDICIAL DISTRICT

AFFIDAVIT OF CHARLES BERGH

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a notary public, personally appeared Charles Bergh, who being by me first duly sworn upon his oath, deposed and stated as follows:

"My name is Charles Bergh. I am above the age of eighteen years, competent to make this affidavit, and have personal knowledge of the facts stated herein."

"I am the Division Director for the Parks and Natural Resources Division of the Transportation and Natural Resources Department of Travis County, Texas. I have been employed as the Division Director for Parks and Natural Resources for approximately eight years. As Division Director, I am responsible for the administration of all Travis County parks, environmental compliance, and resource protection for Travis County, Texas. There are thirty (30) parks in the Travis County park system."

"McGregor/Hippie Hollow Park ("Hippie Hollow"), located at 7000 Comanche Trail, Austin, Texas, is one of the Travis County parks under my administration. Hippie Hollow is the only public "clothing optional" facility located in Travis County, Texas. As of July 11, 1995, children under the age of eighteen (18) years were no longer allowed into the clothing optional park."

"It is part of the duties of the Parks and Natural Resources Division to record and monitor all incidents which occur in the Travis County park system, i.e., violations of any park rules or state laws. The records keeping system includes a collection of all incident reports completed by members of the parks staff. These incident reports are then keyed into a computer system database. Prior to 1996, incident reports involving those sexual offenses which appear in Chapter 21 of the Texas Penal Code were keyed in as "other" with a notation as to the offense. Since 1996 there has been a category called "public indecency," which incorporates these same offenses. In addition, records are kept with regard to public intoxication, sexual harassment, and other violations of the law. It is part of my job to maintain these records.

"In fiscal year 1994, seventy-four (74) incidents of sexual offenses were reported in the Travis County park system. Of those, sixty-four (64) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-1."

"In fiscal year 1995, forty-nine (49) incidents of sexual offenses have been reported in the Travis County park system. Of those, forty-three (43) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-2."

"In fiscal year 1996, thirty-three (33) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-eight (28) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-3."

"In fiscal year 1997, twenty (20) incidents of sexual offenses have been reported in the Travis County park system. Of those, seventeen (17) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-4."

"In fiscal year 1998, twenty-eight (28) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-seven (27) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-5."

"In addition, in the years prior to the enactment of the park rule prohibiting minor children in McGregor/ Hippie Hollow Park, there have been incidents involving indecency with children.

"This rule protects minors from such things as exposure to sexual offenses and public intoxication, and protects them from being photographed in the nude. The location of Hippie Hollow, which includes a beach front or shoreline, prevents any absolute policing of people taking naked pictures of children from boats and the opposing shoreline. Furthermore, the terrain of the park inhibits the effectiveness of law enforcement of protecting children from being exposed or subject to sexual and/or criminal offenses. In particular, the park is heavily wooded and does not allow for adequate policing and leaves children vulnerable.

"Budgetary constraints prevent the providing of mass numbers of personnel to be present at all times so as to protect the children. The rule limiting admission to the park to those over the age of eighteen is the best mechanism to ensure that children will not be exposed to sexual offenses or be photographed naked in the public setting of Hippie Hollow, where there is a history of many sexual offenses occurring in public."

/s/ _____
Charles Bergh

SUBSCRIBED AND SWORN TO BEFORE ME on this 24th day of May, 1999, to certify which witness my hand in official seal.

/s/ _____
Amy L. Firkins
Notary Public in and for
the State of Texas
Commission Expires
Sept. 5, 2001

APPENDIX II

CAUSE NO. 95-11383

CENTRAL TEXAS NUDISTS, AND ROBERT A. MORTON, JR. AND CHRISTINE A. MORTON, INDIVIDUALLY AND AS NEXT FRIEND OF ROBERT A. MORTON, III, REBECCA E. MORTON, and CHARLES G. MORTON, Plaintiffs V. COUNTY OF TRAVIS, Defendant.	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 201st JUDICIAL DISTRICT

AFFIDAVIT OF ROGER DEAN

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a notary public, personally appeared Roger Dean, known to me to be the person whose name is subscribed to the foregoing instrument, who being by me first duly sworn upon his oath, deposed and stated as follows:

"My name is Roger Dean. I am above the age of eighteen years, competent to make this affidavit, and have personal knowledge of the facts stated herein."

"I am a Park Ranger Supervisor for the Northwest District of Travis County for the Parks and Natural Resources Division of the Transportation and Natural Resources Department of Travis County, Texas. The Northwest District includes McGregor/Hippie Hollow Parks. I have been employed as a Park Ranger Supervisor since April of 1995. I am presently a licensed peace officer. Prior to my present position, I was the Chief of Police for the City of Rollingwood for 5 years and was with the Rollingwood Police Department for a total of ten (10) years. As a Park Ranger Supervisor, my duties are to supervise the Park Rangers and staff in the Northwest District and also personally patrol the areas assigned to my district. My job requires that I am familiar with various penal code statutes so that I may be able to enforce these provisions in the Travis County parks system. I am also familiar with the logistics of policing the parks, specifically McGregor/Hippie Hollow."

I am trained and licensed by and through the Texas Commission on Law Enforcement Officer's Standards and Education, ("TCLEOSE"), and I have approximately 14 years of law enforcement experience. I am a TCLEOSE licensed peace officer and also hold a license as an Advanced Certified Peace Officer."

"McGregor/Hippie Hollow Park ("Hippie Hollow"), located at 7000 Comanche Trail, Austin, Texas, is one of the Travis County parks that I patrol on a regular basis. Hippie Hollow is the only public "clothing optional"

facility located in Travis County, Texas. As of July 11, 1995, children under the age of eighteen (18) years were no longer allowed into the clothing optional park."

"It is part of the duties of the Parks and Natural Resources Division to record and monitor all incidents which occur in the Travis County park system, i.e., violations of any park rules or state laws. As a peace officer assigned to patrolling McGregor/Hippie Hollow, I am aware of the types of incidents that occur at this park as well as other Travis County parks. Based on my experience, McGregor/Hippie Hollow has a higher number of sexual offenses occurring in the park than the other parks that I patrol. In the course of my job duties, I have witnessed the various types criminal offenses, particularly sexual offenses which often occur within the view of other park goers. I have also been involved with numerous arrests in this area involving various criminal offenses.

"I have reviewed the incident reports attached to and incorporated by reference in Charles Bergh's affidavit. The types of incidents described in these reports are consistent with my experience as a park ranger and as a supervisor of park ranger in McGregor/Hippie Hollow parks and these incidents do occur at McGregor/Hippie Hollow parks frequently."

"In my expert opinion which based on my experience and training in law enforcement and as a park ranger, this park rule protects minors from such things as exposure to sexual offenses and public intoxication, and protects them from being photographed in the nude. The location of Hippie Hollow, which includes a beach front

or shoreline, prevents any absolute policing of people taking pictures of naked children from boats and the opposing shoreline. Furthermore, the terrain of the park inhibits the effectiveness of law enforcement in protecting children from being exposed or subject to sexual and/or criminal offenses. In particular, the park is heavily wooded and does not allow for adequate policing and often leaves children vulnerable."

"As a Park Ranger Supervisor, it is my opinion this prohibition is the only way to ensure that the children are protected from the various types of offenses and issues listed above. The rule limiting admission to the park to those over the age of eighteen is directly related to the goal of ensuring that children will not be exposed to sexual offenses, be victimized or be photographed naked in the public setting of Hippie Hollow, where there is a history of many sexual offenses occurring in public. It also allows law enforcement to prosecute crimes against children which may be classified as sexual offenses without providing the defense that 'this type of behavior must be permissible because the park rules allow minors to be present."

/s/ _____

Roger Dean

SUBSCRIBED AND SWORN TO BEFORE ME on this 26th day of May, 1999, to certify which witness my hand in official seal.

/s/ _____

Amy L. Firkins
Notary Public in and for
the State of Texas
Commission Expires
Sept. 5, 2001